

Remarks

This amendment is responsive to the Office Action dated March 24, 2004. Applicant has canceled claims 1-11, amended claims 12 and 13 and added new claims 22-32. Claims 12-32 are now pending. Support for the amendments can be found in Applicants' specification at page 13, lines 20-25.

Claim Rejections under 35 U.S.C. § 101

In the Office Action, the Examiner rejected claims 1-12 as being directed to non-statutory subject matter. In this response, Applicants have canceled claims 1-11 and amended claim 12. In particular, claim 12 has been amended to recite a computer-implemented system, which Applicants believe meets the "technological arts" requirement set forth by the Examiner. The rejections under 35 U.S.C. § 101 should be overcome by way of this amendment.

Nevertheless, Applicants wish to comment on the rejections of claims 1-12 under 35 U.S.C. § 101. Applicants traverse the rejections of original claims 1-12 under 35 U.S.C. § 101, and specifically reserve the right to pursue the subject matter of these claims at a later date. Applicants respectively submit that the two-prong test applied by the Examiner in performing the section 101 analysis is not the proper legal test. The Court of Appeals for the Federal Circuit has never enumerated or endorsed such a two-prong test. In particular, while the Federal Circuit has recently required that a claimed invention embody a concrete, tangible and useful result (prong 2), the Federal Circuit has never required that a claimed invention also be within "technological arts" (prong 1) in order to be statutory subject matter under 35 U.S.C. § 101.

Applicants believe that original claims 1-12 recited statutory subject matter under 35 U.S.C. § 101, and specifically reserve the right to pursue the subject matter of these claims at a later date. At this time, however, Applicants have canceled claims 1-11 and amended claim 12 to meet the "technological arts" requirement enumerated by the Examiner. Applicants have made these changes solely in the interest of expediting prosecution toward issuance, but may elect to pursue the subject matter of the original claims in one or more continuation applications.

Claim Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 1-19 under 35 U.S.C. 103(a) as being unpatentable over Mangram et al., "Guideline For Prevention Of Surgical Site Infection" (hereafter Mangram) in view of Ormond-Walshe, "Computerized Databases In Infection Control" (hereafter Ormond-Walshe). Applicants respectfully traverse the rejections to the extent such rejections may be considered applicable to the claims as amended. All pending independent claims now require either identifying when the data indicative of any of the practices is not in compliance with a rule established for the given practice, or generating a flag when the data indicative of any of the practices is not in compliance with the rule. The applied references fail to disclose or suggest the inventions defined by Applicants' claims as amended, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

The Mangram reference outlines a number of guidelines for the prevention of surgical site infections. However, Mangram lacks any teaching of computer-implemented techniques for executing such prevention. Instead, Mangram simply identifies a number of surgical risks and provides written guidelines that list various recommendations for procedures that can mitigate the risks. Indeed, the teaching of Mangram is incorporated by Applicants on page 12, lines 6-8 as a reference that generally discloses guidelines for care standards. See also page 11, lines 2-5.

Consequently, Mangram lacks any teaching or suggestion of computer-implemented techniques for executing the prevention action proposed in its guidelines. As one example, Mangram lacks any suggestion of a computer-implemented system comprising software that identifies when a given health care practice is not in compliance with a rule, as recited in Applicants' claim 22. Identifying when a given health care practice is not in compliance with a rule, for example, may comprise flagging the data indicative of an action that was not in compliance with the rule established for the practice. See Applicants' specification at page 13, lines 20-25.

In the Office Action, the Examiner recognized that Mangram lacks any suggestion of computer-implemented techniques. However, the Examiner cited Ormond-Walshe as disclosing computer-implemented databases used in a surgical environment in order to reduce infection risks. The Examiner concluded that a person with ordinary skill in the art would have stored the guidelines as taught by Mangram in

a computer-implemented database as taught by Ormond-Walshe in order to arrive at Applicants' claimed invention.

Ormond-Walshe generally describes the expanding role of databases to aid in the management of infection control information. However, Ormond-Walshe lacks any teaching of identifying when a given health care practice is not in compliance with a rule, as recited in Applicants' claims. Instead, Ormond-Walshe is concerned with the input and storage of infection data in an electronic database, and the advantages and drawbacks to such electronic database storage vis-a-vi handwritten notes. While Ormond-Walshe mentions that specific organisms can be "flagged up," Ormond-Walshe lacks any suggestion of the flagging of data in response to non-compliance of a given health care practice. By using the term "flagged up," Ormond-Walshe is merely referring to the identification of organisms for which healthcare workers should receive infection control advice.

Further, none of the applied references discloses or suggests a computer-implemented method for managing risks of surgical site infection incident to a surgical procedure, the method comprising evaluating a practice that poses an infection risk during a stage of the surgical procedure, storing data indicative of the practice as executed by one or more persons involved with the surgical procedure, and identifying when the data indicative of the practice is not in compliance with a rule established for the practice. These features are recited in new claim 22, which Applicants believe is in condition for immediate allowance.

As Applicants have now amended the pending claims to require either identifying when a given health care practice is not in compliance with a rule, or specifically flagging the data when the health care practice is not in compliance with a rule, Applicants respectively submit that all pending claims are now in condition for allowance. Such computer-implemented techniques are clearly lacking from the teaching of Mangram and Ormond-Walshe.

In view of the amendments to the claims and forgoing arguments, Applicants respectfully request reconsideration and prompt allowance of all pending claims. The current amendments clearly distinguish the pending independent claims from the applied prior art, but Applicants reserve comment regarding the dependent claims. Applicants do not acquiesce to the Examiner's rejections of the dependent claims or the

Examiner's characterizations of the applied references in relation to the dependent claims.

Please charge any additional fees or credit any overpayment to deposit account number 13-3723. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Respectfully submitted,



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